



महाराष्ट्र शासन राजपत्र

भाग सहा

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प्राधिकृत प्रकाशन

संसदेचे अधिनियम व राष्ट्रपतींनी प्रख्यापित केलेले अध्यादेश

अनुक्रमणिका

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LAW AND JUDICIARY DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, dated the 7th November 2015.

No. 1873/B.—The following Ordinances promulgated by the President are hereby republished for general information :—

MINISTRY OF LAW AND JUSTICE

(LEGISLATIVE DEPARTMENT)

*New Delhi, the 23rd October 2015/Kartika 1, 1937 (Saka)*THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL
APPELLATE DIVISION OF HIGH COURTS ORDINANCE, 2015

(No. 8 of 2015)

Promulgated by the President in the Sixty-sixth Year of the Republic of India.

An Ordinance to provide for the constitution of Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value and for matters connected therewith or incidental thereto.

Whereas a Bill to provide for the Constitution of Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value was introduced in the Council of States and referred to the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for examination and report which is pending ;

And Whereas, Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action ;

Now Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :—

CHAPTER I

PRELIMINARY

1. *Short title, extension and commencement.*—(1) This Ordinance may be called the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force at once.

2. *Definitions.*—(1) In this Ordinance, unless the context otherwise requires,—

(a) “Commercial Appellate Division” means the Commercial Appellate Division in a High Court constituted under sub-section (1) of section 5 ;

(b) “Commercial Court” means the Commercial Court constituted under sub-section (1) of section 3 ;

(c) “commercial dispute” means a dispute arising out of—

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents ;

(ii) export or import of merchandise or services ;

(iii) issues relating to admiralty and maritime law ;

(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same ;

(v) carriage of goods ;

(vi) construction and infrastructure contracts, including tenders ;

(vii) agreements relating to immovable property used exclusively in trade or commerce ;

(viii) franchising agreements ;

- (ix) distribution and licensing agreements ;
- (x) management and consultancy agreements ;
- (xi) joint venture agreements ;
- (xii) shareholders agreements ;
- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services ;
- (xiv) mercantile agency and mercantile usage ;
- (xv) partnership agreements ;
- (xvi) technology development agreements ;
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits ;
- (xviii) agreements for sale of goods or provision of services ;
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum ;
- (xx) insurance and re-insurance ;
- (xxi) contracts of agency relating to any of the above ; and
- (xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.—A commercial dispute shall not cease to be a commercial dispute merely because—

- (a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property ;
- (b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions ;
- (d) “Commercial Division” means the Commercial Division in a High Court constituted under sub-section (1) of section 4 ;
- (e) “District Judge” shall have the same meaning as assigned to it in clause (a) of article 236 of the Constitution of India ;
- (f) “document” means any matter expressed or described upon any substance by means of letters, figures or marks, or electronic means, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter ;
- (g) “notification” means a notification published in the *Official Gazette* and the expression “notify” with its cognate meanings and grammatical variations shall be construed accordingly ;
- (h) “Schedule” means the Schedule appended to the Ordinance ; and
- (i) “Specified Value”, in relation to a commercial dispute, shall mean the value of the subject matter in respect of a suit as determined in accordance with section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government.“

(2) The words and expressions used and not defined in this Ordinance but defined in the Code of Civil Procedure, 1908 (5 of 1908) and the Evidence Act, 1872 (1 of 1872), shall have the same meanings respectively assigned to them in that Code and the Act.

CHAPTER II

CONSTITUTION OF COMMERCIAL COURTS, COMMERCIAL DIVISIONS AND COMMERCIAL APPELLATE DIVISIONS

3. Constitution of commercial Courts.—(1) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Ordinance :

Provided that no Commercial Court shall be constituted for the territory over which the High Court has ordinary original civil jurisdiction.

(2) The State Government shall, after consultation, with the concerned High Court specify, by notification, the local limits of the area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

(3) The State Government shall, with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a Commercial Court, from amongst the cadre of Higher Judicial Service in the State.

4. Constitution of Commercial Division of High Court.—(1) In all High Courts, having ordinary civil jurisdiction, the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Ordinance.

(2) The Chief Justice of the High Court shall nominate such judges of the High Court who have experience in dealing with commercial disputes to be judges of the Commercial Division.

5. Constitution of Commercial Appellate Division.—(1) After issuing notification under sub-section (1) of section 3 or order under sub-section (1) of section 4, the Chief Justice of the concerned High Court shall, by order, constitute Commercial Appellate Division having one or more Division Benches for the purpose of exercising the jurisdiction and powers conferred on it by the Ordinance.

(2) The Chief Justice of the High Court shall nominate such judges of the High Court who have experience in dealing with commercial disputes to be judges of the Commercial Appellate Division.

6. Jurisdiction of Commercial Court.—The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.

Explanation.—For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).

7. Jurisdiction of Commercial Divisions of High Courts.—All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court :

Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court :

Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 (16 of 2000) or section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.

8. Bar against revision application or petition against an interlocutory order.—Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.

9. Transfer of suit if counter-chain in a commercial dispute is of Specified Value.—(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), in the

event that a counter-claim filed in a suit before a civil court relating to a commercial dispute is of Specified Value, such suit shall be transferred by the civil court to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit.

(2) In the event that such suit is not transferred in the manner contemplated in sub-section (1), the Commercial Appellate Division of the High Court exercising supervisory jurisdiction over the civil court in question may, on the application of any of the parties to the suit, withdraw such suit pending before the civil court and transfer the same for trial or disposal to the Commercial Court or Commercial Division or, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

10. Jurisdiction in respect of arbitration matters.—Where the subject matter of an arbitration is a commercial dispute of a Specified Value and—

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Appellate Division where such Commercial Appellate Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Appellate Division where such Commercial Appellate Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.

11. Bar jurisdiction of Commercial Courts and Commercial Divisions.—Notwithstanding anything contained in this Ordinance, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

CHAPTER III

SPECIFIED VALUE

12. Determination of Specified Value.—(1) The Specified Value of the subject matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner :—

(a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account, for determining such Specified Value ;

(b) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such Specified Value ;

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining Specified Value ;

(d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value ; and

(e) where the counter-claim is raised in any suit, appeal or application, the value of the subject matter of the commercial dispute in such counter-claim as on the date of the counterclaim shall be taken into account.

(2) The aggregate value of the claim and counter-claim, if any, as set out in the statement of claim and the counter-claim, if any, in an arbitration of a commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be.

(3) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908 (5 of 1908), as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under this Ordinance.

CHAPTER IV

APPEALS

13. Appeals from decrees of Commercial Courts and Commercial Divisions.—(1) Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be :

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Ordinance and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Ordinance.

14. Expeditious disposal of appeals.—The Commercial Appellate Division shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of such appeal.

CHAPTER V

TRANSFER OF PENDING SUITS

15. Transfer of pending cases.—(1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a ' commercial dispute of Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court :

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Ordinance shall apply to those procedures that were not complete at the time of transfer.

(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance with Order XIV-A of the Code of Civil Procedure, 1908 (5 of 1908) :

Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement must be filed.

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

CHAPTER VI

AMENDMENTS TO THE PROVISIONS OF THE CODE OF CIVIL PROCEDURE, 1908

16. Amendments to Code of Civil Procedure, 1908 in its application to commercial dispute.—

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Ordinance, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908, by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Ordinance, the provisions of the Code of Civil Procedure as amended by this Ordinance shall prevail.

CHAPTER VII

MISCELLANEOUS

17. Collection and disclosure of data by Commercial Courts, Commercial Divisions and Commercial Appellate Divisions.—The statistical data regarding the number of suits, applications, appeals or writ petitions filed before the Commercial Court, Commercial Division, or Commercial Appellate Division, as the case may be, the pendency of such cases, the status of each case, and the number of cases disposed of, shall be maintained and updated every month by each Commercial Court, Commercial Division, Commercial Appellate Division and shall be published on the website of the relevant High Court.

18. Power of High Court to issue directions.—The High Court may, by notification, issue practice directions to supplement the provisions of Chapter II or the Code of Civil Procedure, 1908 (5 of 1908) in so far as such provisions apply to the hearing of commercial disputes of a Specified Value.

19. Infrastructure facilities.—The State Government shall provide necessary infrastructure to facilitate the working of a Commercial Court or a Commercial Division of a High Court.

20. Training and continuous education.—The State Government may, in consultation with the High Court, establish necessary facilities providing for training of Judges who may be appointed to the Commercial Court, Commercial Division or the Commercial Appellate Division in a High Court.

21. Act to have overriding effect.—Save as otherwise provided, the provisions of this Ordinance shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Ordinance.

22. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the *Official Gazette*, make such provisions, not inconsistent with the provisions of this Ordinance as may appear to it to be necessary or expedient for removing the difficulty :

Provided that no such order shall be made under this section after the expiry of a period of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

SCHEDULE

(See section 17)

1. *Amendment of section 26.*—In section 26 of the Code of Civil Procedure, 1908 (5 of 1908) (hereafter referred to as the Code), in sub-section (2), the following proviso shall be inserted, namely :—

“Provided that such an affidavit shall be in the form and manner as prescribed under Order VI Rule 15A.”.

2. *Substitution of new section for section 35.*—For section 35 of the Code, the following section shall be substituted, namely :—

“35. (1) In relation to any commercial dispute, the Court, notwithstanding anything contained in any other law for the time being in force or Rule, has the discretion to determine :

- (a) whether costs are payable by one party to another ;
- (b) the quantum of those costs ; and
- (c) when they are to be paid.

Explanation.— For the purpose of clause (a), the expression “costs” shall mean reasonable costs relating to—

- (i) the fees and expenses of the witnesses incurred ;
- (ii) legal fees and expenses incurred ;
- (iii) any other expenses incurred in connection with the proceedings.

(2) If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party :

Provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing.

Illustration.—The Plaintiff, in his suit, seeks a money decree for breach of contract, and damages. The Court holds that the Plaintiff is entitled to the money decree. However, it returns a finding that the claim for damages is frivolous and vexatious.

In such circumstances the Court may impose costs on the Plaintiff, despite the Plaintiff being the successful party, for having raised frivolous claims for damages.

(3) In making an order for the payment of costs, the Court shall have regard to the following circumstances, including—

- (a) the conduct of the parties ;
- (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful ;
- (c) whether the party had made a frivolous counter-claim leading to delay in the disposal of the case ;
- (d) whether any reasonable offer to settle is made by a party and unreasonably refused by the other party ; and
- (e) whether the party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court.

(4) The orders which the Court may make under this provision include an order that a party must pay—

- (a) a proportion of another party's costs ;
- (b) a stated amount in respect of another party's costs ;
- (c) costs from or until a certain date ;
- (d) costs incurred before proceedings have begun ;
- (e) costs relating to particular steps taken in the proceedings ;
- (f) costs relating to a distinct part of the proceedings ; and
- (g) interest on costs from or until a certain date.

3. *Amendment of section 35A.*—In section 35A of the Code, sub-section (2) shall be omitted.

4. *Amendment of First Schedule.*—In the First Schedule to the Code,—

(A) in the Order V, in Rule 1, in sub-rule (1), for the second proviso, the following proviso shall be substituted, namely :—

“Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons. On expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.” ;

(B) in Order VI,—

(i) after Rule 3, the following Rule shall be inserted, namely :—

“3A. Forms of pleading in Commercial Courts— In a Commercial Dispute, where forms of pleadings have been prescribed under the High Court Rules or Practice Directions made for the purposes of such commercial disputes, pleadings shall be in such forms.” ;

(ii) after Rule 15, the following Rule shall be inserted, namely :—

“15A. Verification of pleadings in a Commercial Dispute.—

(1) Notwithstanding anything contained in Rule 15, every pleading in a Commercial Dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties.

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

(5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.” ;

(C) in Order VII, after Rule 2, the following Rule shall be inserted, namely : —

“2A. Where interest is sought in the suit.—

(1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out under sub-rules (2) and (3).

(2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 (5 of 1908) and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint ; or on some other basis and shall state the basis of that.

(3) Pleadings shall also state—

(a) the rate at which interest is claimed ;

(b) the date from which it is claimed ;

(c) the date to which it is calculated ;

(d) the total amount of interest claimed to the date of calculation ; and

(e) the daily rate at which interest accrues after that date.” ;

(D) in Order VIII,—

(i) in Rule 1, for the proviso, the following proviso shall be substituted, namely :—

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons. On expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.” ;

(ii) after Rule 3, the following Rule shall be inserted, namely :—

“3A. Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court.

(1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule.

(2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.

(3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

(4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.

(5) If the defendant disputes the plaintiffs valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit.” ;

(iii) in Rule 5, in sub-rule (1), after the first proviso, the following proviso shall be inserted, namely : —

“Provided further, that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability.” ;

(iv) in Rule 10, after the first proviso, the following proviso shall be inserted, namely :—

“Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.” ;

(E) for Order XI of the Code, the following Order shall be substituted, namely :—

“ORDER XI

DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH COURT OR A COMMERCIAL COURT.

1. *Disclosure and discovery of documents.*—(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including :

(a) Documents referred to and relied on by the plaintiff in the plaint ;

(b) Documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiffs case ;

(c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only—

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case setup by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies. The list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

(4) In case of urgent filings, plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(5) Plaintiff shall not be allowed to rely on documents, which were in the plaintiffs power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court. Such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.

(6) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(7) Defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counter-claim if any, including—

(a) documents referred to and relied on by the defendant in the written statement ;

(b) documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defense ;

(c) nothing in this Rule shall apply to documents produced by defendants and relevant only—

(i) for the cross-examination of the plaintiffs witnesses,

(ii) in answer to any case setup by the plaintiff subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counter-claim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies. The list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document ;

(9) The written statement or counter-claim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule 7 (c)(iii) above, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counter-claim, have been disclosed and copies thereof annexed with the written statement or counter-claim and that the defendant does not have in its power, possession, control or custody, any other documents ;

(10) Save and except for sub-rule 7 (c)(iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counter claim, save and except by leave of Court. Such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counter-claim ;

(11) The written statement or counter-claim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same ;

(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

2. *Discovery by Interrogatories.*—(1) In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer :

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose :

Provided further that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

(2) On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

(3) In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

(4) Interrogatories shall be in the form provided in Form No. 2 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908), with such variations as circumstances may require.

(5) Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer of other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

(6) Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer.

(7) Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous and any application for this purpose may be made within seven days after service of the interrogatories.

(8) Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.

(9) An affidavit in answer to interrogatories shall be in the form provided in Form No. 3 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908), with such variations as circumstances may require.

(10) No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court.

(11) Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer, or to answer further, either affidavit or by *viva voce* examination, as the court may direct.

3. *Inspection.*—(1) All parties shall complete inspection of all documents disclosed within thirty days of the date of filing of the written statement or written statement to the counter-claim, whichever is later. The Court may extend this time limit upon application at its discretion, but not beyond thirty days in any event.

(2) Any party to the proceedings may seek directions from the Court, at any stage of the proceedings, for inspection or production of documents by the other party, of which inspection has been refused by such party or documents have not been produced despite issuance of a notice to produce.

(3) Order in such application shall be disposed of within thirty days of filing such application, including filing replies and rejoinders (if permitted by Court) and hearing.

(4) If the above application is allowed, inspection and copies

(2) thereof shall be furnished to the party seeking it, within five days of such order.

(5) No party will be permitted to rely on a document, which it had failed to disclose or of which inspection has not been given, save and except with leave of Court.

(6) Court may impose exemplary costs against a defaulting party, who wilfully or negligently failed to disclose all documents pertaining to a suit or essential for a decision therein and which are in their power, possession, control or custody or where a Court holds that inspection or copies of any documents had been wrongfully or unreasonably withheld or refused.

4. *Admission and denial of documents.*—(1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court.

(2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying :

- (a) Correctness of contents of a document ;
- (b) Existence of a document ;
- (c) Execution of a document ;
- (d) Issuance or receipt of a document ;
- (e) Custody of a document.

Explanation.—A statement of admission or denial of the existence of a document made in accordance with sub-rule 3(2)(b) of the modified order XI will include the admission or denial of the contents of a document.

(3) Each party shall set out reasons for denying a document under any of the above grounds. Bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court.

(4) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever.

(5) An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement.

(6) In the event that the Court holds that any party has unduly refused to admit a document under any of the above criteria, -costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party.

(7) Court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.

5. *Production of documents.*—(1) Any party to a proceeding may seek or the Court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(2) Notice to produce such document shall be issued in the Form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908).

(3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.

(4) The Court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non-production are not given and order costs.

6. *Electronic Records.*—(1) In case of disclosures and inspection of Electronic Records (as defined in the Information Technology Act, 2000) (21 of 2000), furnishing of printouts shall be sufficient compliance of the above provisions.

(2) At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.

(3) Where Electronic Records form part of documents disclosed, the declaration on oath to be filed by a party shall specify—

(a) parties to such Electronic Record ;

(b) manner in which such electronic record was produced and by whom ;

(c) dates and time of preparation or storage or issuance or receipt of each such electronic record ;

(d) source of such electronic record and date and time when the electronic record was printed ;

(e) in case of email ids, details of ownership, custody and access to such email ids ;

(f) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource ;

(g) deponent's knowledge of contents and correctness of contents ;

(h) whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored ;

(i) that the printout or copy furnished was taken from the original computer or computer resource.

(4) The parties relying on printouts or copy in electronic form, of any electronic records, will not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original Electronic Record.

(5) The Court may give directions for admissibility of Electronic Records¹ at any stage of the proceedings.

(6) Any party may seek directions from the Court and the Court may of its motion issue directions for submission of further proof of any electronic record including metadata or logs before admission of such electronic record.

7. *Certain provisions of the Code of Civil Procedure, 1908 not to apply.*—For avoidance of doubt, it is hereby clarified that Order XIII Rule 1, Order VII Rule 14 and Order VIII Rule 1A the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to suits or applications before the Commercial Divisions of High Court or Commercial Courts.”.

5. *Insertion of new Order XIII-A.*—After Order XIII of the Code, the following Order shall be inserted, namely :—

“ORDER XIII-A

1. *Scope of and classes of suits to which this Order applies.*—(1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

(2) For the purposes of this Order, the word “claim” shall include—

- (a) part of a claim ;
- (b) any particular question on which the claim (whether in whole or in part) depends ; or
- (c) a counter-claim, as the case may be.

(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

2. *Stage for application for summary judgement.*—An applicant may apply for summary judgement at any time after summons has been served on the defendant :

Provided that, no application for summary judgement may be made by such applicant after the Court has framed the issues in respect of the suit.

3. *Grounds for summary judgement.*—The Court may give a summary judgement against a plaintiff or defendant on a claim if it considers that—

- (a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be ; and
- (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

4. *Procedure.*—(1) An application for summary judgement to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-rules (a) to (f) mentioned hereunder :

- (a) the application must contain a statement that it is an application for summary judgement made under this Order ;
- (b) the application must precisely disclose all material facts and identify the point of law, if any ;
- (c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,—
 - (i) include such documentary evidence in its application, and
 - (ii) identify the relevant content of such documentary evidence on which the applicant relies ;
- (d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be ;
- (e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(2) Where a hearing for summary judgement is fixed, the respondent must be given at least thirty days' notice of :

- (a) the date fixed for the hearing ; and
- (b) the claim that is proposed to be decided by the Court at such hearing.

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgement or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in sub-rules (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant :

- (a) The reply must precisely—
 - (i) disclose all material facts ;
 - (ii) identify the point of law, if any ; and
 - (iii) state the reasons why the relief sought by the applicant should not be granted ;
- (b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—
 - (i) include such documentary evidence in its reply ; and
 - (ii) identify the relevant content of such documentary evidence on which the respondent relies ;
- (c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be ;
- (d) the reply must concisely state the issues that should be framed for trial ;
- (e) the reply must identify what further evidence will be brought on record at trial that could not be brought on record at the stage of summary judgement ; and
- (f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgement.

5. *Evidence for hearing of summary judgement.*—(1) Notwithstanding anything in this Order, if the respondent in an application for summary judgement wishes to rely on additional documentary evidence during the hearing, the respondent must :

- (a) file such documentary evidence ; and
- (b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.

(2) Notwithstanding anything in this Order, if the applicant for summary judgement wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must—

- (a) file such documentary evidence in reply ; and
- (b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(3) Notwithstanding anything to the contrary, sub-rules (1) and (2) above shall not require documentary evidence to be—

- (a) filed if such documentary evidence has already been filed ; or .
- (b) served on a party on whom it has already been served.

6. *Orders that may be made by the Court.*—(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following :

- (a) judgement, on the claim ;
- (b) conditional order in accordance with Rule 7 mentioned hereunder ;
- (c) dismissing the application ;
- (d) dismissing part of the claim and a judgement on part of the claim that is not dismissed ;
- (e) striking out the pleadings (whether in whole or in part) ; or
- (f) further directions to proceed for case management under Order XVA.

(2) Where the Court makes any of the orders as set forth in sub-rule (1) (a) to (f) above, the Court shall record its reasons for making such order.

7. *Conditional order.*—(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it will do so, the Court may make a conditional order as set forth in Rule 6(b) above.

(2) Where the Court makes a conditional order, it may :

(a) make it subject to all or any of the following conditions :

(i) require a party to deposit a sum of money in the Court ;

(ii) require a party to take a specified step in relation to the claim or defence, as the case may be ;

(iii) require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper ;

(iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion ; and

(b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

8. *Power to impose costs.*—The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code.”.

6. *Omission of Order XV.*—Order XV of the Code shall be omitted.

7. *Insertion of Order XV-A.*—After Order XV of the Code, the following Order shall be inserted, namely :—

“ORDER XV-A

1. *First Case Management hearing.*—The Court shall hold the first Case Management Hearing, not later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

2. *Orders to be passed in a Case Management Hearing.*—In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the Court may pass an order—

(a) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 (5 of 1908) after examining pleadings, documents and documents produced before it, and on examination conducted by the Court under Rule 2 of Order X, if required ;

(b) listing witnesses to be examined by the parties ;

(c) fixing the date by which affidavit of evidence to be filed by parties ;

(d) fixing the dates on which evidence of the witnesses of the parties to be recorded ;

(e) fixing the date by which written arguments are to be filed before the Court by the parties ;

(f) fixing the date on which oral arguments are to be heard by the Court ; and

(g) setting time limits for parties and/or their advocates to address oral arguments.

3. *Time limit for the completion of a trial.*—In fixing dates or setting time limits for the purposes of Rule 2 of this Order, the Court shall ensure that the arguments are closed not later than six months from the date of the first case management hearing.

4. *Recording of oral evidence on a day-to-day basis.*—The Court shall, as far as possible, ensure that the recording of evidence shall be carried on, on a day-to-day basis until the cross-examination of all the witnesses is complete.

5. *Case Management Hearings during a trial.*—The Court may, if necessary, also hold Case Management Hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.

6. *Powers of the Court in a Case Management Hearing.*—(1) In any Case Management Hearing held under this Order, the Court shall have the power to—

(a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII A ;

(b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues ;

(c) extend or shorten the time for compliance with any practice, direction or Court order if it finds sufficient reason to do so ;

(d) adjourn or bring forward a hearing if it finds sufficient reason to do so ;

(e) direct a party to attend the Court for the purposes of examination under Rule 2 of Order X ;

(f) consolidate proceedings ;

(g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed ;

(h) direct a separate trial of any issue ;

(i) decide the order in which issues are to be tried ;

(j) exclude an issue from consideration ;

(k) dismiss or give judgment on a claim after a decision on a preliminary issue ;

(l) direct that evidence be recorded by a Commission where necessary in accordance with Order XXVI ;

(m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material ;

(n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material ;

(o) delegate the recording of evidence to such authority appointed by the Court for this purpose ;

(p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority ;

(q) order any party to file and exchange a costs budget ;

(r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit.

(2) When the Court passes an order in exercise of its powers under this Order, it may—

(a) make it subject to conditions, including a condition to pay a sum of money into Court ; and

(b) specify the consequence of failure to comply with the order or a condition.

(3) While fixing the date for a Case Management Hearing, the Court may direct that the parties also be present for such case management hearing, if it is of the view that there is a possibility of settlement between the parties.

7. *Adjournment of Case Management Hearing.*—(1) The Court shall not adjourn the Case Management Hearing for the sole reason that the advocate appearing on behalf of a party is not present :

Provided that an adjournment of the hearing is sought in advance by moving an application, the Court may adjourn the hearing to another date upon the payment of such costs as the Court deems fit, by the party moving such application.

(2) Notwithstanding anything contained in this Rule, if the Court is satisfied that there is a justified reason for the absence of the advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

8. *Consequences of non-compliance with orders.*—Where any party fails to comply with the order of the Court passed in a Case Management Hearing, the Court shall have the power to—

(a) condone such non-compliance by payment of costs to the Court ;

(b) foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial, as the case may be, or

(c) dismiss the plaint or allow the suit where such noncompliance is wilful, repeated and the imposition of costs is not adequate to ensure compliance.”.

8. *Amendment of Order XVIII.*—In Order XVIII of the Code, in Rule 2, for sub-rules (3A), (3B), (3C), (3D), (3E) and (3F), the following shall be substituted, namely :—

“(3A) A party shall, within four weeks prior to commencing the oral arguments, submit concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) The written arguments shall clearly indicate the provisions of the laws being cited in support of the arguments and the citations of judgments being relied upon by the party and include copies of such judgments being relied upon by the party.

(3C) A copy of such written arguments shall be furnished simultaneously to the opposite party.

(3D) The Court may, if it deems fit, after the conclusion of arguments, permit the parties to file revised written arguments within a period of not more than one week after the date of conclusion of arguments.

(3E) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3F) It will be open for the Court to limit the time for oral submissions having regard to the nature and complexity of the matter.”.

9. *Amendment of Order XVIII.*—In Order XVIII of the Code, in Rule 4, after sub-rule (1), the following sub-rules shall be inserted, namely :—

(1A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first case management hearing.

(1B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court.

(1C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal :

Provided that any other party will be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit.”.

10. *Amendment to Order XIX.*—In Order XIX of the Code, after Rule 3, the following Rules shall be inserted, namely :—

“4. *Court may control evidence.*—(1) The Court may, by directions, regulate the evidence as to issues on which it requires evidence and the manner in which such evidence may be placed before the Court.

(2) The Court may, in its discretion and for reasons to be recorded in writing, exclude evidence that would otherwise be produced by the parties.”.

5. *Redacting or rejecting evidence.*—A Court may, in its discretion, for reasons to be recorded in writing—

(i) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in its view, constitute evidence.

(ii) return or reject an affidavit of examination-in-chief as not constituting admissible evidence.

6. *Format and guidelines of affidavit of evidence.*—An affidavit must comply with the form and requirements set forth below :

(a) such affidavit should be confined to, and should follow the chronological sequence of, the dates and events that are relevant for proving any fact or any other matter dealt with ;

(b) where the Court is of the view that an affidavit is a mere reproduction of the pleadings, or contains the legal grounds of any party's case, the Court may, by order, strike out the affidavit or such parts of the affidavit, as it deems fit and proper ;

(c) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject ;

(d) an affidavit shall state—

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief ; and

(ii) the source for any matters of information or belief.

(e) an affidavit should—

(i) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file) ;

(ii) be divided into numbered paragraphs ;

(iii) have all numbers, including dates, expressed in figures ; and

(iv) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents that are relied upon.”.

11. *Amendment of Order XX.*—In Order XX of the Code, for Rule 1, the following Rule shall be substituted, namely :—

“(1) The Commercial Court, Commercial Division, or Commercial Appellate Division, as the case may be, shall, within ninety days of the conclusion of arguments, pronounce judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.”.

APPENDIX

STATEMENT OF TRUTH

(Under First Schedule, Order VI-Rule 15A and Order X-Rule 1)

STATEMENT OF TRUTH BY [party position and name of party in full] I, the deponent above-named, do hereby solemnly affirm and declare as under :

1. I am [name of party and relevant details] in the above suit and competent to swear this affidavit.
2. I am sufficiently conversant with the facts of the case and have also examined all relevant documents and records in relation thereto.
3. I say that the statements made in [mention specific paragraph numbers] paragraphs are true to my knowledge and statements made in [mention specific paragraph numbers] paragraphs are based on information received which I believe to be correct and statements made in [mention specific paragraph numbers] are based on legal advice.
4. I say that there is no false statement or concealment of any material fact, document or record and I have included information that is according to me, relevant for the present suit.
5. I say that that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by me have been disclosed and copies thereof annexed with the plaint, and that I do not have any other documents in my power, possession, control or custody.
6. I say that the above-mentioned pleading comprises of a total of [number of pages] pages, each of which has been signed by me.
7. I state that the Annexures hereto are true copies of the documents referred to and relied upon by me.
8. I say that I am aware that for any false statement or concealment, I shall be liable for action taken against me under the law.

Place :

Date :

VERIFICATION

The statements made above are true to my knowledge.

Verified at [place] on this [date]

DEPONENT

PRANAB MUKHERJEE,
President.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

MINISTRY OF LAW AND JUSTICE

(LEGISLATIVE DEPARTMENT)

New Delhi, the 23rd October 2015/Kartika 1, 1937 (Saka)

THE ARBITRATION AND CONCILIATION (AMENDMENT) ORDINANCE, 2015

(No. 9 of 2015)

Promulgated by the President in the Sixty-sixth Year of the Republic of India.

An Ordinance to amend the Arbitration and Conciliation Act, 1996.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action ;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :—

1. *Short title and commencement.*—(1) This Ordinance may be called the Arbitration and Conciliation (Amendment) Ordinance, 2015.

(2) It shall come into force at once.

2. *Amendment of section 2.*—In the Arbitration and Conciliation Act, 1996 (26 of 1996). (hereinafter referred to as the principal Act), in section 2,—

(I) in sub-section (1)—

(A) for clause (e), the following clause shall be substituted, namely :—

‘(e) “Court” means—

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes ;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court ;’ ;

(B) in clause (f), in sub-clause (iii), the words “a company or” shall be omitted ;

(II) in sub-section (2), the following proviso shall be inserted, namely :—

“Provided that subject to an agreement to the contrary, the provisions of sections 9, 27, and clause (a) of sub-section (1) and sub-section (3) of section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Ordinance.”.

3. *Amendment of section 7.*—In section 7 of the principal Act, in sub-section (4), in clause (b), after the words “or other means of telecommunication”, the words “including communication through electronic means” shall be inserted.

4. *Amendment of section 8.*—In section 8 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely :—

“(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of

submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists.”;

(ii) in sub-section (2), the following proviso shall be inserted, namely :—

“Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.”.

5. Amendment of section 9.—Section 9 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re numbered, the following sub-sections shall be inserted, namely :—

“(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.”.

6. Amendment of section 11.—In section 11 of the principal Act,—

(i) in sub-sections (4), (5) and (6), for the words “the Chief Justice or any person or institution designated by him” wherever they occur, the words “the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court” shall be substituted ;

(ii) after sub-section (6), the following sub-sections shall be inserted, namely :—

“(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement.

(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.” ;

(iii) in sub-section (7), for the words “the Chief Justice or the person or institution designated by him is final”, the words “the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision” shall be substituted ;

(iv) for sub-section (8), the following sub-section shall be substituted, namely :—

“(8) The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court, before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to—

(a) any qualifications required for the arbitrator by the agreement of the parties ; and

(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.” ;

(v) in sub-section (9), for the words “the Chief Justice of India or the person or institution designated by him”, the words “the Supreme Court or the person or institution designated by that Court” shall be substituted ;

(vi) for sub-section (10), the following sub-section shall be substituted, namely :—

“(10) The Supreme Court or, as the case may be, the High Court, may make such scheme as the said Court may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6), to it.”;

(vii) in sub-section (11), for the words “the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made”, the words “different High Courts or their designates, the High Court or its designate to whom the request has been first made” shall be substituted ;

(viii) for sub-section (12), the following sub-section shall be substituted, namely :—

“(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the “Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “Supreme Court” ; and

(b) where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to “the Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “High Court” within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate, and where the High Court itself is the Court referred to in that clause, to that High Court.’;

(ix) after sub-section (12), the following sub-sections shall be inserted, namely :—

“(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case may be, as expeditiously as possible and an endeavor shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

(14) For the purpose of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal, the High Court may frame such rules as may be necessary, after taking into consideration the rates specified in the Fourth Schedule.

Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) in case where parties have agreed for determination of fees as per the rules of an arbitral institution.”.

7. Insertion of new section 11A.—After section 11 of the principal Act, the following new section shall be inserted, namely :—

“11A. Power of Central Government to amend Fourth Schedule.—(1) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification in the *Official Gazette*, amend the Fourth Schedule and thereupon the Fourth Schedule shall be deemed to have been amended accordingly.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.”.

8. Amendment of section 12.—In section 12 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely :—

“(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality ; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation 1.— The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2.— The disclosure shall be made by such person in the form specified in the Sixth Schedule.” ;

(ii) after sub-section (4), the following sub-section shall be inserted, namely :—

“(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator :

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing :

Provided further that this sub-section shall not apply to cases where an arbitrator has already been appointed on or before the commencement of the Arbitration and Conciliation (Amendment) Ordinance, 2015.”.

9. Amendment of section 14.—In section 14 of the principal Act, in sub-section (1), in the opening portion, for the words “The mandate of an arbitrator shall terminate if, the words “The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if” shall be substituted.

10. Substitution of new section for section 17.—For section 17 of the principal Act, the following section shall be substituted, namely :—

“**17. Interim measures ordered by arbitral tribunal.**—(1) A party may, during the arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to the arbitral tribunal—

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings ; or

(ii) for an interim measure of protection in respect of any of the following matters, namely :—

(a) the preservation, interim custody or sale of any goods which are the subject matter of the arbitration agreement ;

(b) securing the amount in dispute in the arbitration ;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence ;

(d) interim injunction or the appointment of a receiver ;

(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,

and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.” .

11. Amendment of section 23.—In section 23 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely :—

“(2A) The respondent, in support of his case, may also submit a counter claim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counter claim or set-off falls within the scope of the arbitration agreement.”.

12. Amendment of section 24.—In section 24 of the principal Act, after the proviso to sub-section (1), the following proviso shall be inserted, namely :—

“Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.”.

13. Amendment of section 25.—In section 25 of the principal Act, in clause (b), at the end, after the words “allegations by the claimant”, the words “and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited” shall be inserted.

14. Amendment of section 28.—In section 28 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely :—

“(3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.”.

15. Insertion of new sections 29A and 29B.—After section 29 of the principal Act, the following new sections shall be inserted, namely :—

“**29A. Time limit for arbitral award.**—(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period :

Provided that while extending the period under this subsection, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent, for each month of such delay.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

29B. Fast track procedure.—(1) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).

(2) The parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.

(3) The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1):

(a) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing ;

(b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them ;

(c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues ;

(d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

(4) The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.

(5) If the award is not made within the period specified in sub-section (4), the provisions of sub-sections (3) to (9) of section 29A shall apply to the proceedings.

(6) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.”.

16. Amendment of section 31.—In section 31 of the principal Act,—

(i) in sub-section (7), for clause (b), the following shall be substituted, namely :—

“(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent, higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).’ ;

(ii) for sub-section (8), the following sub-section shall be substituted, namely :—

“(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31 A.”.

17. Insertion of new section 31A.—After section 31 of the principal Act, the following new section shall be inserted, namely :—

“31A. Regime for costs.—(1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—

- (a) whether costs are payable by one party to another ;
- (b) the amount of such costs ; and
- (c) when such costs are to be paid.

Explanation.—For the purpose of this sub-section, “costs” means reasonable costs relating to—

- (i) the fees and expenses of the arbitrators, Courts and witnesses ;
- (ii) legal fees and expenses ;
- (iii) any administration fees of the institution supervising the arbitration ; and
- (iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

(2) If the Court or arbitral tribunal decides to make an order as to payment of costs,—

- (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party ; or
- (b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.

(3) In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including—

- (a) the conduct of all the parties ;
- (b) whether a party has succeeded partly in the case ;
- (c) whether the party had made a frivolous counter claim leading to delay in the disposal of the arbitral proceedings ; and
- (d) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.

(4) The Court or arbitral tribunal may make any order under this section including the order that a party shall pay—

- (a) a proportion of another party's costs ;
- (b) a stated amount in respect of another party's costs ;
- (c) costs from or until a certain date only ;
- (d) costs incurred before proceedings have begun ;
- (e) costs relating to particular steps taken in the proceedings ;
- (f) costs relating only to a distinct part of the proceedings ; and
- (g) interest on costs from or until a certain date.

(5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen.”.

18. Amendment of section 34.—In section 34 of the principal Act,—

(I) in sub-section (2), in clause (b), for the *Explanation*, the following *Explanations* shall be substituted, namely :—

“Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81 ; or

(ii) it is in contravention with the fundamental policy of Indian law ; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.” ;

(II) after sub-section (2), the following sub-section shall be inserted, namely :—

“(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award :

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.” ;

(III) after sub-section (4), the following sub-sections shall be inserted, namely :—

“(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.”.

19. Substitution of new section for section 36.—For section 36 of the principal Act, the following section shall be substituted, namely :—

“**36. Enforcement.**—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing :

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).”.

20. Amendment of section 37.—In section 37 of the principal Act, in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely :—

“(a) refusing to refer the parties to arbitration under section 8 ;

(b) granting or refusing to grant any measure under section 9 ;

(c) setting aside or refusing to set aside an arbitral award under section 34.”.

21. Amendment of section 47.—In section 47 of the principal Act, for the *Explanation*, the following *Explanation* shall be substituted, namely :—

Explanation.—In this section and in the sections following in this Chapter, “Court” means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.’.

22. Amendment of section 48.—In section 48 of the principal Act, for the *Explanation* to sub-section (2), the following *Explanations* shall be substituted, namely :—

“*Explanation 1.*—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81 ; or

(ii) it is in contravention with the fundamental policy of Indian law ; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”.

23. Amendment of section 56.—In section 56 of the principal Act, the *Explanation* shall be renumbered as *Explanation 1* thereof, and after the *Explanation 1* as so renumbered, the following *Explanation* shall be inserted, namely :—

“*Explanation 2.*—In this section and in the sections following in this Chapter, “Court” means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.’.

24. Amendment of section 57.—In section 57 of the principal Act, in sub-section (1), for the *Explanation*, the following *Explanations* shall be substituted, namely :—

“*Explanation 1.*— For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81 ; or

(ii) it is in contravention with the fundamental policy of Indian law ; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.— For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”.

25. Insertion of new Fourth Schedule, Fifth Schedule, Sixth Schedule and Seventh Schedule.—After the Third Schedule to the principal Act, the following new Schedules shall be inserted, namely :—

“THE FOURTH SCHEDULE

[See section 11 (14)]

Sum in dispute	Model fee
Upto Rs. 5,00,000	Rs. 45,000
Above Rs. 5,00,000 and upto Rs. 20,00,000.	Rs. 45,000 plus 3.5 per cent. of the claim amount over and above Rs. 5,00,000.
Above Rs. 20,00,000 and upto Rs. 1,00,00,000.	Rs. 97,500 plus 3 per cent. of the claim amount over and above Rs. 20,00,000.
Above Rs. 1,00,00,000 and upto Rs. 10,00,00,000.	Rs. 3,37,500 plus 1 per cent. of the claim amount over and above Rs. 1,00,00,000.
Above Rs. 10,00,00,000 and upto Rs. 20,00,00,000.	Rs. 12,37,500 plus 0.75 per cent. of the claim amount over and above Rs. 1,00,00,000
Above Rs. 20,00,00,000	Rs. 19,87,500 plus 0.5 per cent. of the claim amount over and above Rs. 20,00,00,000 with a ceiling of Rs. 30,00,000.

Note.— In the event, the arbitral tribunal is a sole arbitrator, he shall be entitled to an additional amount of twenty-five per cent. on the fee payable as per the table set out above.

THE FIFTH SCHEDULE

[See section 12 (l)(b)]

The following grounds give rise to justifiable doubts as to the independence or impartiality of arbitrators :—

Arbitrator's relationship with the parties or counsel

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.
2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.
5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.
7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.
8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.
9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.
10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.
11. The arbitrator is a legal representative of an entity that is a party in the arbitration.
12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.
13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.
14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

Relationship of the arbitrator to the dispute

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.
16. The arbitrator has previous involvement in the case.

Arbitrator's direct or indirect interest in the dispute

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.
18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.
19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

Previous services for one of the parties or other involvement in the case

20. The arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an affiliate of the party making the appointment in an unrelated matter, but the arbitrator and the party or the affiliate of the party have no ongoing relationship.
21. The arbitrator has within the past three years served as counsel against one of the parties or an affiliate of one of the parties in an unrelated matter.
22. The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.
23. The arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator.
24. The arbitrator currently serves, or has served within the past three years, as arbitrator in an-other arbitration on a related issue involving one of the parties or an affiliate of one of the parties.

Relationship between an arbitrator and another arbitrator or counsel

25. The arbitrator and another arbitrator are lawyers in the same law firm.
26. The arbitrator was within the past three years a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the same arbitration.
27. A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties or an affiliate of one of the parties.
28. A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute.
29. The arbitrator has within the past three years received more than three appointments by the same counsel or the same law firm.

Relationship between arbitrator and party and others involved in the arbitration

30. The arbitrator's law firm is currently acting adverse to one of the parties or an affiliate of one of the parties.
31. The arbitrator had been associated within the past three years with a party or an affiliate of one of the parties in a professional capacity, such as a former employee or partner.

Other circumstances

32. The arbitrator holds shares, either directly or indirectly, which by reason of number or de-nomination constitute a material holding in one of the parties or an affiliate of one of the parties that is publicly listed.
33. The arbitrator holds a position in an arbitration institution with appointing authority over the dispute.
34. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties, where the affiliate is not directly involved in the matters in dispute in the arbitration.

Explanation 1.— The term “close family member” refers to a spouse, sibling, child, parent or life partner.

Explanation 2.—The term “affiliate” encompasses all companies in one group of companies including the parent company.

Explanation 3.— For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above.

THE SIXTH SCHEDULE

[See section 12 (1)(b)]

NAME :

CONTACT DETAILS :

PRIOR EXPERIENCE (INCLUDING EXPERIENCE WITH ARBITRATIONS) :

NUMBER OF ON-GOING ARBITRATIONS :

CIRCUMSTANCES DISCLOSING ANY PAST OR PRESENT RELATIONSHIP WITH OR INTEREST IN ANY OF THE PARTIES OR IN RELATION TO THE SUBJECT MATTER IN DISPUTE, WHETHER FINANCIAL, BUSINESS, PROFESSIONAL OR OTHER KIND, WHICH IS LIKELY TO GIVE RISE TO JUSTIFIABLE DOUBTS AS TO YOUR INDEPENDENCE OR IMPARTIALITY (LIST OUT) :

CIRCUMSTANCES WHICH ARE LIKELY TO AFFECT YOUR ABILITY TO DEVOTE SUFFICIENT TIME TO THE ARBITRATION AND IN PARTICULAR YOUR ABILITY TO FINISH THE ENTIRE ARBITRATION WITHIN **TWENTY-FOUR** MONTHS AND RENDER AN AWARD WITHIN **THREE** MONTHS (LIST OUT) :

THE SEVENTH SCHEDULE

[See section 12(5)]

Arbitrator's relationship with the parties or counsel

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.
2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.
5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.
7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.
8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.

9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.
10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.
11. The arbitrator is a legal representative of an entity that is a party in the arbitration.
12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.
13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.
14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

Relationship of the arbitrator to the dispute

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.
16. The arbitrator has previous involvement in the case.

Arbitrator's direct or indirect interest in the dispute

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.
18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.
19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

Explanation 1.— The term “close family member” refers to a spouse, sibling, child, parent or life partner.

Explanation 2.— The term “affiliate” encompasses all companies in one group of companies including the parent company.

Explanation 3.— For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently ; to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above.’

PRANAB MUKHERJEE,
President.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

By order and in the name of the Governor of Maharashtra,

N. J. JAMADAR,
Secretary to Government,
Law and Judiciary Department.